

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ENVIRONMENTAL PROTECTION &
IMPROVEMENT COMPANY, LLC,

Plaintiff,

-against-

WECARE ORGANICS, LLC,

Defendant

Civil Action No. 15-cv-8308

COMPLAINT

Plaintiff, Environmental Protection & Improvement Company, LLC (“EPIC”), by and through its undersigned counsel, hereby files this Complaint against Defendant WeCare Organics, LLC (“WeCare”) (together the “Parties”) and states:

PARTIES AND JURISDICTION

1. Plaintiff EPIC is a New Jersey limited liability company having its principal place of business in New Jersey. EPIC’s sole member is Synagro Rail, Inc., a Delaware corporation with its principal place of business in New Jersey.

2. Defendant WeCare is a New York limited liability company having its principal place of business in New York. Upon information and belief, all members of WeCare are citizens of New York.

3. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1331 insofar as the Parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Venue is proper pursuant to 28 U.S.C. § 1391 insofar as WeCare resides in this district as defined in that section, and a substantial part of the events or omissions giving rise to the claim occurred within New York.

FACTUAL BACKGROUND

5. Plaintiff and Defendant conducted business together pursuant to a Biosolids Rail Transportation and Disposal Service Agreement (the “Service Agreement”) relating to transportation and disposal of waste from New York City, New York. **Exhibit A.**

6. A dispute arose when WeCare failed to pay EPIC for work and services in the amount of \$570,522.00 under the terms of the Service Agreement.

7. The Parties agreed to settle their dispute and, accordingly, entered into a Settlement Agreement and Mutual Release (the “Settlement Agreement”) on July 30, 2015. **Exhibit B.**

8. Pursuant to the Settlement Agreement, WeCare agreed to pay to EPIC the total amount of \$599,048.31, of which \$570,522.20 was to be paid in principal and \$28,526.11 was to be paid in interest.

9. The settlement amount was to be divided into six monthly installment payments of \$99,841.39, with the first payment due on August 25, 2015, and the last payment due on January 25, 2016.

10. WeCare paid the first monthly installment payment of \$99,841.30 on or about August 25, 2015.

11. The second monthly installment payment of \$99,841.30 was due on September 25, 2015.

12. WeCare did not pay the second monthly installment payment by September 25, 2015.

13. By failing to timely pay the second monthly installment payment of \$99,841.30, WeCare was in default under the Settlement Agreement less than two months after entering into the Settlement Agreement.

14. Section 6 of the Settlement Agreement provides that in the event of default, EPIC may declare the unpaid balance due immediately, and may seek any and all damages as a result of WeCare's default including, but not limited to, the unpaid balance amount, compensatory, consequential, and/or incidental damages, lien on WeCare's assets, interest at a rate not exceeding the legal rate of interest for the Commonwealth of Pennsylvania, reasonable attorneys' fees and costs as well as any other remedy permitted by law.

15. By letter dated October 6, 2015, EPIC sent WeCare a notice of acceleration and default indicating that if it did not receive the second installment by October 9, 2015, the full remaining balance shall become immediately due on October 12, 2015. **Exhibit C.**

16. By email dated Wednesday, October 7, 2015, WeCare acknowledged that it did not make the second payment in a timely manner and asked that EPIC consider a "less aggressive pay down schedule," asking for between \$30,000 and \$50,000 per month and indicating that it was considering "refinancing" to pay its settlement obligation to EPIC. **Exhibit D.**

17. WeCare did not pay the second installment by October 9, 2015.

18. On or about October 13, 2015, WeCare paid \$25,000.00 to EPIC.

19. WeCare did not pay, and has not paid, the full principal amount of \$499,206.92 owed to EPIC.

20. WeCare has withheld payment of the \$474,296.94 balance due without cause or justification, thereby materially breaching the Settlement Agreement.

COUNT I
BREACH OF CONTRACT

21. EPIC incorporates by reference the allegations contained in the paragraphs above as if set forth fully herein.

22. EPIC and WeCare executed a valid and binding contract, specifically the Settlement Agreement.

23. WeCare failed to make timely payments as required under the Settlement Agreement, and therefore breached the Settlement Agreement.

24. WeCare failed to timely remedy its default by making accelerated payment as demanded by EPIC under the Settlement Agreement and therefore further breached the Settlement Agreement.

25. WeCare's breaches of contract have damaged EPIC.

26. Under the Settlement Agreement, EPIC is entitled to recover principal as well as interest, costs and attorneys' fees, among other remedies.

27. EPIC has incurred and will continue to incur attorneys' fees and costs. Under the Settlement Agreement, EPIC is entitled to recover all such fees and costs.

PRAYER FOR RELIEF

28. WHEREFORE, Plaintiff Environmental Protection & Improvement Company, LLC, respectfully requests that this Court enter judgment in its favor and against Defendant WeCare Organics, LLC, in the amount of \$474,296.94, plus interest, costs, attorneys' fees and any other and further relief this Court deems proper.

Respectfully Submitted,

/s John A. Basinger
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